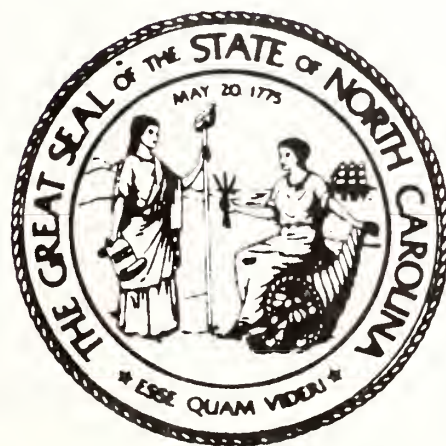




REPORT
OF THE
LEGISLATIVE STUDY COMMISSION
FOR STATE POLICIES ON THE
MEETINGS OF GOVERNMENTAL BODIES



MAY 31, 1978

RALEIGH, NORTH CAROLINA



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North Carolina General Assembly

State Legislative Building
Raleigh 27611

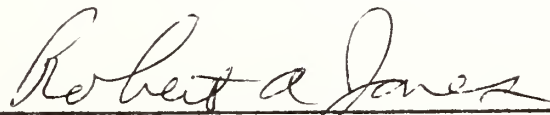
To the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the Members of the 1977 General Assembly:

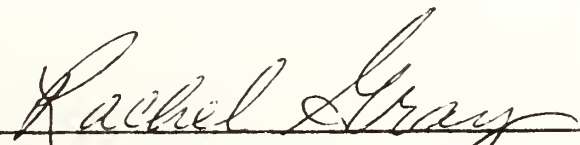
In accordance with Chapter 959 of the 1977 Session Laws, the following members were appointed to the Legislative Study Commission for State Policies on the Meetings of Governmental Bodies: Rep. Bob Jones, Chairman; Sen. Rachel Gray, Vice-Chairman; Sen. Dallas Alford, Jr., Mr. Jack Aulis, Rep. Louise Brennan, Dr. Janice Faulkner, Rep. Daniel A. C. Hall, Jr., Rep. Bertha Holt, Sen. Donald Kincaid, Rep. George Miller, Jr., Sen. R. C. Soles, Jr., and Miss Ailey Mae Young.

After the 1977 General Assembly adjourned, the North Carolina Supreme Court, in the case of Student Bar Association v. Byrd, 293 N.C. 594 (1977), ruled on the Open Meetings Law. This Commission gave thorough consideration to that decision and used House Bill 522 as a guide in its deliberations. Because of limited time, both for the Commission to meet and for the 1978 Session, we have confined the scope of our proposed bill to the subjects of "notice" and "coverage," leaving many aspects of the Open Meetings Law for further study later this year.

Attendance was good at all five meetings, and everyone present at the meetings was allowed complete and open participation in our deliberations. We hope the 1977 General Assembly will permit this Commission to continue its study of the Open Meetings Law this year to prepare a comprehensive rewrite of the law for the consideration of the 1979 General Assembly.

Respectfully submitted,


Representative Robert Jones, Chairman


Senator Rachel Gray, Vice-Chairman

INTRODUCTION

North Carolina has had a comprehensive open-meetings law since 1971. In enacting that law, North Carolina joined a nationwide trend that now finds such a statute in all fifty states. From the beginning there has been some dissatisfaction with the North Carolina statute, both in substance and because of ambiguities created by its language. In 1977, a complete rewrite of the open-meetings law was introduced in the General Assembly. House Bill 522 would have clarified certain sections, expanded or reduced other sections, dealt with conduct not expressly covered by the existing law, and expanded the remedies available to enforce the law. The bill generated much opposition, and it was finally decided that the whole matter deserved more careful study than was possible during the legislative session. The result was the creation, by Chapter 959 of the 1977 Session Laws, of the Legislative Study Commission for State Policies on the Meetings of Governmental Bodies. The legislation called for a twelve-member commission, comprising four appointees each of the Governor, the President Pro Tempore of the Senate, and the Speaker of the House. It directed the commission to

- (1) review and evaluate the effectiveness of the current statutes relating to meetings of governmental bodies; [and]
- (2) using original House Bill 522 (1977 Session) as a basis for study of the revision of the present statutes, report to the 1977 General Assembly, Second Session 1978, its findings and recommendations with respect to the policies that should govern the meetings of governmental bodies within the State.

This is that Commission's 1978 report.

Instead of a complete study of the open-meetings law, the Commission has concentrated on two areas of immediate concern: the statute's coverage and the need for notice of meetings subject to the statute. Two considerations led the Commission to so limit its work. First, the appointment of Commission

members was unavoidably delayed, and not until February 17, 1978 was the Commission able to hold its first meeting. Second, in the time between adjournment of the General Assembly's 1977 Session and the Commission's organizational meeting, the state Supreme Court decided Student Bar Association Board of Governors v. Byrd, 293 N.C. 594 (1977). It held that the faculty of the University of North Carolina law school was not a group subject to the open-meetings law. In reaching that conclusion, the Court indicated that a number of other boards that many had thought were subject to the statute probably were not. It also held that there was no requirement that the public be notified of meetings subject to the act, in effect overruling an earlier opinion of the Court of Appeals. The concern generated by the Supreme Court's decision was immediate, and the Commission decided that since time was limited before the 1978 Session of the General Assembly, the best use of that time would be to clarify the coverage provisions of the law and insert a requirement of notice. It then would seek to have its mandate extended until the 1979 General Assembly and would complete its comprehensive study of the open-meetings law during the fall and winter of 1978.

This initial decision has guided the Commission in its work. During the late winter and spring of 1978, the Commission has met five times. From its deliberations has come a recommended bill-set out at the end of this report-- that does what the Commission sought to do: It clarifies the coverage of the law, enacts a notice requirement, and extends the Commission's life until the 1979 General Assembly.

The remainder of this report will explain the Commission's proposals concerning coverage and notice.

COVERAGE OF THE STATUTE

Under the Byrd decision, to be subject to the law a group must be both a governing body and a governmental body, and the Court construed the terms "governing" and "governmental" rather narrowly. Deciding that the coverage of the statute should be broadened, the Commission considered several options toward that end. Its recommendation moves away from the "governing and governmental" phraseology, providing instead that the statute apply to all "public bodies," a new term to be defined in the law. Obviously, the definition of "public body" is crucial and therefore should be examined in detail. The definition is as follows:

"Public body" means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the State that is composed of two or more members and

(1) exercises or is authorized to exercise any legislative, policy-making, quasi-judicial, administrative, or advisory function; and

(2) is established by (i) the State Constitution, (ii) an Act or Resolution of the General Assembly, (iii) a resolution or order of a state agency pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation, (iv) an ordinance, resolution, or other action of the governing board of a county, city, school administrative unit, or other political subdivision or public corporation or (v) an Executive Order of the Governor or formal action of the head of a state department or division.

In addition, "public body" means (1) a committee of a public body and

(2) the governing board of a "public hospital," as defined in G.S. 159-39.

"Public body" does not include and shall not be construed to include meetings among the professional staff of a public body, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in paragraph (2) of this subsection.

This definition has four components:

A multi-member body. First, a "public body" is a group with at least two members. The open-meetings statute is not intended to reach the activities of a single official, such as a state-level cabinet secretary.

A part of government. Second, a "public body" is a group that is part of government. It is part of either state government or "one or more counties, cities, school administrative units, or other political subdivisions or public corporations." The quoted phrase is intended to include all the various sorts of units and agencies that would commonly be thought of as local government. The inclusion of counties, cities (which include towns and villages), and school administrative units is explicit. The phrases "political subdivisions" and "public corporations" are purposely broad and intended to bring in any other sorts of special-purpose units of local government. (Indeed, the two phrases would also include counties, cities, and school administrative units.) The group must be part of government, however. Simply receiving public funds as might a chamber of commerce, a community arts council, or a private university would not cause a private agency to become subject to the statute.

The group's functions. Third, a "public body" is a group that is authorized to exercise or in fact does exercise any of the following sorts of functions: legislative, policy-making, quasi-judicial, administrative, or advisory. This listing is intended to be very broad; with one important exception, it is difficult

to conceive of a number of people organized into a group that do not exercise or are not authorized to exercise at least one of those functions. That one exception is the judicial function, as there is no intention to extend the statute's coverage to the courts.

Method of establishment. Fourth, a "public body" is a group that has been rather formally established by one of a number of listed methods. The first method is by action of the State Constitution. The State Board of Education, for example, is created in this way. The second is by act or resolution of the General Assembly; this method would include a great many groups, at both the state and local levels. The third is by action of a state agency, establishing a political subdivision or public corporation. This method reflects the fact some important sorts of local governments are established by state agencies, for example, sanitary districts by the Commission for Health Services and some cities by the Municipal Board of Control. The fourth is by action of the governing board of a "county, city, school administrative unit, or other political subdivision or public corporation." It should be noted that the quoted phrase is the same one used earlier to include all varieties of local--as opposed to state--government. The final method is by executive order of the Governor or action of the head of a state department or division, which would include state-level agencies that were not established by the Constitution or by act or resolution of the General Assembly.

Three other points. Three other elements of the definition deserve comment. First, if a group is a public body, its committees are also considered to be public bodies. Second, the governing boards of all public hospitals are included. Many hospital boards would be included by the general language of the definition; the specific mention assures coverage of those non-profit corporations that operate hospitals owned by local governments. Third, meetings

among the professional staff of an agency, unless the staff members involved have been established into some sort of formal group, explicitly are not subject to the statute. Thus, a monthly meeting of a county manager with his department heads would not be subject to the statute, nor would a conference between a director of a state division and two or three assistants. But, if a city council established a standing committee of four department heads to review federal grant requests originating within the city government, such a formally established group would be a public body.

NOTICE OF OFFICIAL MEETINGS

As originally enacted in 1971, the open-meetings statute had no requirement that the public be notified of meetings required to be open. In some other states with the same statutory situation, the courts have held that a notice requirement is implied, and in 1976 the North Carolina Court of Appeals followed their lead and held that notice was implicitly required by our statute (News & Observer Publishing Co. v. Interim Board of Education for Wake County, 29 N.C. App. 37). In the Byrd decision, however, the Supreme Court disagreed with the Court of Appeals and held that the absence of an explicit notice requirement meant that no notice was necessary. Thus our statute now seems to prohibit closed meetings but not secret meetings. It is in this context that the Commission recommends that a notice requirement be added to the statute.

The Commission's recommendation provides for different methods of notice depending on the type of meeting involved and the circumstances under which it is called. The Commission recognizes that no form of notice is guaranteed to give notice to all who might be interested in a body's meetings. It has sought, therefore, to provide mechanisms that stand a good chance of providing actual

notice to interested persons without imposing substantial administrative burdens on public bodies.

Regular meetings. If a public body has established a schedule of regular meetings, it is required to keep that schedule on file in a central location. State agencies are to file their schedules with the Secretary of State, county agencies with the clerk to the board of county commissioners, city agencies with the city clerk, and all other agencies either with their own clerk or secretary or with the clerk to the board of county commissioners in the county where the body normally meets. It should be noticed that this filing requirement applies only to public bodies that have established schedules of regular meetings; it does not require all public bodies to establish such a schedule and does not apply to a body that has no such schedule. If a body has no schedule of regular meetings, all its meetings would in effect be special meetings and subject to the notice requirements of special meetings.

Adjourned or recessed meetings. Often boards will adjourn or recess one meeting to a future date, to be completed at that date. The adjourned or recessed portion of the meeting is considered a continuation of the first meeting rather than a separate meeting. The Commission's recommendation on notice recognizes this practice and provides that if the time and place of an adjourned or recessed meeting is set at the first meeting, and if proper notice had been given of the first meeting, no further notice of the adjourned or recessed meeting is necessary.

Special meetings. If a public body holds a meeting at a time or place other than that shown on a filed schedule of regular meetings and that meeting is not an adjourned or recessed meeting, then two forms of special notice must be given of the meeting. First, notice must be posted in a public place. The first choice is the principal bulletin board of the public body. If the body has no such bulletin board, then the notice must be posted at the door of its

usual meeting place. Second, notice must be mailed or delivered to any news medium--newspaper, radio station, or television station--requesting it. Both the posting and the mailing or delivery must occur at least 48 hours before the special meeting.

Emergency meetings. Occasionally a public body will have to meet on less than 48 hours' notice, and the Commission's notice recommendations provide for such occasions. If a body must meet to deal with an emergency--defined as "generally unexpected circumstances that require immediate consideration by the public body"--it may do so as fast as the members can be brought together. Public notice is satisfied by giving notice of the meeting, as soon after the members are notified as possible, to each local news medium that has requested emergency notice. The method is to be either by telephone or by the same method used to notify the members of the body. To guard against abuse of the emergency-meeting provision, the recommendation limits such an emergency meeting to consideration of business connected with the emergency.

PROPOSED LEGISLATION

A BILL TO BE ENTITLED

AN ACT TO AMEND G.S. CHAPTER 143, ARTICLE 33B, THE NORTH CAROLINA OPEN MEETINGS LAW, BY CLARIFYING THE LAW AND BY INCLUDING A REQUIREMENT OF PUBLIC NOTICE OF OFFICIAL MEETINGS AND TO AMEND CHAPTER 959, 1977 SESSION LAWS, TO PROVIDE THAT THE OPEN MEETINGS STUDY COMMISSION SHALL REPORT TO THE 1979 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-318.1 is rewritten to read as follows:

"§ 143-318.1. Public policy.--Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of this State and its political subdivisions exist solely to conduct the people's business, it is the public policy of this State that the hearings, deliberations, and actions of these bodies be conducted openly."

Sec. 2. G.S. 143-318.2 is rewritten to read as follows:

"§ 143-318.2. All official meetings open to the public.--(a) Except as provided in G.S. 143-318.3, 143-318.4, and 143-318.5, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

"(b) 'Public body' means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the State that is composed of two or more members and

- (1) exercises or is authorized to exercise any legislature, policy-making, quasi-judicial, administrative, or advisory function; and
- (2) is established by (i) the State Constitution, (ii) an Act or Resolution of the General Assembly, (iii) a resolution or order of

a state agency, pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation, (iv) an ordinance, resolution, or other action of the governing board of a county, city, school administrative unit, or other political subdivision or public corporation, or (v) an Executive Order of the Governor or formal action of the head of a state department or division.

In addition, 'public body' means (1) a committee of a public body and (2) the governing board of a 'public hospital,' as defined in G.S. 159-39.

"'Public body' does not include and shall not be construed to include meetings among the professional staff of a public body, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in paragraph (2) of this subsection.

"(c) 'Official meeting' means any meeting, assembly, or gathering together at any time or place of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body; however, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article."

Sec. 3. G.S. 143-318.3 as it appears in the 1974 Replacement Volume 3C is amended as follows:

- (a) The introductory paragraph of subsection (a) is amended by deleting the words "Any of the bodies specified in G.S. 143-318.1"

and inserting in lieu thereof the words "A public body".

- (b) Subsection (a)(5) is amended by deleting the words "governing or governmental" and inserting in lieu thereof the word "public".
- (c) Subsection (b) is amended in the first sentence by deleting the words "governing or governmental body specified in G.S. 143-318.1" and inserting in lieu thereof the words "public body".
- (d) Subsection (b) is further amended in the proviso to the first sentence by deleting the words "said governing" near the end of the proviso and inserting in lieu thereof the words "the public".

Sec. 4. G.S. Chapter 143, Article 33B is amended by adding a new section at the end thereof to read as follows:

"§ 143-318.8. Public notice of official meetings.--(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) For public bodies that are part of state government, with the Secretary of State;
- (2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) For the governing board and each other public body that is part of a city government, with the city clerk;
- (4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in paragraphs (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

"(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

- (1) If a meeting is an adjourned or recessed session of a regular meeting or of some other meeting notice of which has been given pursuant to this subsection (b), and the time and place of the adjourned or recessed session has been set during the regular or other meeting, no further notice is necessary.
- (2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room and (ii) to be mailed or delivered to each newspaper, radio station, and television station that has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be posted and mailed or delivered at least 48 hours before the time of the meeting. The public body may require each newspaper, radio station, and television station submitting a written request for notice to renew the request annually and may charge a reasonable fee to cover the cost of mailed or delivered notice.

- (3) For an emergency meeting the public body shall cause notice of the meeting to be given to each local newspaper, radio station, and television station that has filed a written request (that includes the newspaper's or station's telephone number) for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by telephone or by the same method used to notify the members of the public body and shall be given immediately after the notice has been given to those members. An 'emergency meeting' is one called because of generally unexpected circumstances that require immediate consideration by the public body. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph."

Sec. 5. Chapter 959 of the 1977 Session Laws is amended in Section 2(2) by inserting after the comma following "1978" and before the word "its" the words "and to the 1979 General Assembly,".

Sec. 6. G.S. 153A-40 is amended by adding a new paragraph at the end of subsection (b) of that section to read as follows:

"In addition to the procedures set out in this subsection, a person or persons calling a special or emergency meeting of the board of commissioners shall comply with the notice requirements of G.S. Chapter 143, Art. 33B, the open-meetings law."

Sec. 7. G.S. 160A-71 is amended by adding a new sentence at the end of subsection (b) of that section to read as follows:

"In addition to the procedures set out in this subsection or any city charter, a person or persons calling a special meeting of a city council

shall comply with the notice requirements of G.S. Chapter 143, Art. 33B, the open-meetings law."

Sec. 8. Sections 1, 2, 3, 4, 5, and 6 of this act shall become effective October 1, 1978. Sections 7 and 8 shall become effective upon ratification.

